

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO, CALIFORNIA

AKAL CORPORATION,
Respondent

and

Case 27-CA-19482

UNITED GOVERNMENT SECURITY OFFICERS
OF AMERICA, LOCAL 53,
Charging Party Union

Chet Blue Sky, Esq.,
for the General Counsel
Emily F. Keimig, Esq. and
Patrick R. Scully, Esq.,
for the Respondent, Esq.,
John Tucker, Esq.
for the Charging Party Union

DECISION ¹

Albert A. Metz, Administrative Law Judge. The issue is whether the Respondent's restrictive directives to a union agent representing an employee at an investigative meeting violated Section 8(a) (1) of the National Labor Relations Act.² See *NLRB v. Weingarten*, 420 U.S. 251 (1975). On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following findings of fact.³

¹ This matter was heard at Denver, Colorado, on July 26, 2005.

² 29 U.S.C. § 158 (a)(1).

³ The Parties' post-hearing Motion to Correct Transcript is granted. The motion and my attached order granting the motion, dated September 25, 2005, are received into evidence as joint exhibit 1.

I. JURISDICTION AND LABOR ORGANIZATION

5 The Respondent is a New Mexico corporation with an office and place of business in Espanola, New Mexico. It has been engaged in the business of providing security guard services at various locations, including the U.S. Department of Justice and the United States Marshals Service at the Federal Courthouse located in Denver, Colorado. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The Respondent further admits, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ISSUES

15 The Complaint alleges that on or about August 12, 2004, Respondent unlawfully: (1) instructed employee Steven P. Eubanks' union representative to remain silent throughout Eubanks' responses to written questions, thereby preventing the union representative from presenting facts and arguments on behalf of Eubanks; (2) instructed the union representative that his primary reason for being present during the preparation of responses to the Respondent's questions was to observe rather than participate; and (3) instructed the union representative that he was to sit behind a divider and have no eye or verbal contact with Eubanks during the time he responded to Respondent's written questions. The Respondent denies that any instructions it gave to the union representative violated Eubanks' *Weingarten* rights to representation.

III. FACTS

A. Background

25 30 The Respondent and the Union are parties to a collective bargaining agreement, effective from June 10, 2004 through September 30, 2007. The unit of employees covered by that agreement includes Court Security Officers (CSOs) working in Denver, Colorado. Glenn Lauer is the Respondent's Site Supervisor of its Denver operations. Don Rehm has been a Contract Manager for Respondent and sometimes oversees Lauer's operations. The Respondent admits that Lauer and Rehm are agents within the meaning of Section 2(13) of the Act or supervisors within the meaning of Section 2(11) of the Act.

40 Keith Jefferson is a Lead Court Security Officer (LCSO) for Respondent. Jefferson is assigned to the Federal District Court at the Alfred A. Arraj U. S. Courthouse in Denver. He is a member of the collective bargaining unit. Jefferson reports directly to Lauer and is responsible for interactions between Lauer and the CSOs assigned to the Arraj Courthouse.

45 50 Steve Eubanks was employed by the Respondent as a CSO in Denver from October, 2002 until August 24, 2004. In August 2004 Eubanks was working during a federal civil trial at the Arraj Courthouse and saw what he believed to be an improper communication by a party in the case with members of the jury. Eubanks reported his observations and testified in court concerning the matter. The Respondent investigated the situation and decided that Eubanks had violated various performance standards by his conduct concerning the alleged jury tampering. Eubanks was ultimately terminated on August 24 for allegedly violating United States Marshal Service performance standards and making false statements relating to the jury situation. His discharge is not at issue in this case.

B. The August 12 Meeting

5 The facts surrounding the *Weingarten* issue occurred on August 12 and commenced when
Contract Manager Rehm telephoned Lauer and told him he was investigating Eubanks' conduct
regarding the alleged improper jury communications. Rehm instructed Lauer to summon
Eubanks to a meeting and to have Eubanks bring a union representative with him. Rehm
10 directed Lauer to prepare written questions about the matter under investigation and to have
Eubanks respond in writing to those questions. Rehm also instructed Lauer that he was not to
allow the union representative to interfere with Eubanks during the time he wrote his responses
to the questions. Lauer testified that Rehm asked him if there was a partition in the interview
room and a place where Eubanks could be separated by sight from the Union's representative.
15 Lauer confirmed there was a portable partition in the room and Rehm directed that it be
positioned so that Eubanks and the union representative would sit out of sight of one another.
Immediately after his conversation with Rehm, Lauer moved a portable partition panel in the
interview room (room number 472) so it would separate the two tables that were in the room.

20 Lauer subsequently prepared questions inquiring into the performance standards alleged
to have been violated by Eubanks. Eubanks was then summoned by LCSO Jefferson to report to
room 472 in order to see Lauer. Eubanks was told that he was going to need Union
representation with him. As a result of this message Eubanks called upon Union President
Richard Robbins to represent him.

25 There are some differences in the testimony of Robbins, Eubanks, Jefferson and Lauer as
to what precisely occurred when the four men met on August 12 in room 472. The following are
my findings as to what was said and done on that occasion based on my assessment of the
demeanor of the witnesses, the impressions they gave as to the accuracy of their recollections
30 and the record as a whole. Robbins and Eubanks testified that when they arrived at room 472
with Jefferson they observed a rectangle table; a circular table; and a portable partition. The
partition separated the room in half and served as a divider between the two tables. Lauer and
Robbins exchanged pleasantries and then Lauer told him that he had some questions that
Eubanks needed to answer. Lauer gave the pages of questions to Robbins. Lauer instructed
35 Robbins that he wanted him to sit on the opposite side of the partition while Eubanks wrote his
responses to the questions and not to have contact with him while he was writing his answers as
he wanted the responses to be those of Eubanks and not Robbins. He also told Robbins and
Eubanks that if they wanted to consult during the time Eubanks was answering the questions
40 they could do so outside the room in the hallway. Lauer told Robbins that these ground rules
were pursuant to Rehm's orders.

45 Robbins believed that the restrictions Lauer had outlined violated Eubanks' *Weingarten*
rights to union representation. Thus, Robbins asked Lauer for time to telephone Donna Huff, the
Union's International Union Representative. Lauer told him to go ahead. Robbins called Huff
and reported that the Respondent wanted to separate him and Eubanks while the latter answered
the Respondent's written questions. Huff told Robbins to comply with Lauer's instructions and
to advise Eubanks to do the same. Huff also instructed Robbins to tell Eubanks that he should
50 not perjure himself and that he should inform Respondent that his *Weingarten* rights were being
violated. Eubanks also talked to Huff who reiterated what she had told Robbins and added that
the Union would file a grievance later.

After talking with Huff, Eubanks and Robbins complied with Lauer's instructions and sat where directed with the partition separating them. Eubanks and Robbins testified that they were not able to see one another and did not communicate while Eubanks responded to the written questions. Lauer and Jefferson left the room as Eubanks sat down to start answering the questions. They went through an adjoining door into Lauer's office and remained there. Lauer and Jefferson did not hear what was going on in room 472 as they were conversing and a radio was playing in the office. Before Eubanks finished his responses, he and Robbins went to Lauer's office and asked his permission to consult with each other. Lauer told them that was fine and that they should go into the hallway to confer. They then went to the hallway and discussed the questions. During this discussion Eubanks told Robbins that he was writing responses that included his opinion that his *Weingarten* rights were being violated. Following their discussions the two men returned to the room where Eubanks finished writing his responses to the questions. Eubanks and Robbins then went to Lauer's office and handed him the interrogatories. Lauer briefly surveyed the papers and then told Eubanks that he was relieved of his duties. Robbins asked Lauer if it would have made any difference what Eubanks put on the questionnaire. Lauer replied, "This is what Human Resources and the United States Marshal Service instructed me to do."

IV. ANALYSIS

The Supreme Court in *NLRB v. Weingarten*, 420 U.S. 251 (1979), sustained the Board's holding that Section 8(a)(1) of the Act provides an employee the right to be accompanied and assisted by a union representative at a meeting which the employee reasonably believes may result in disciplinary action. An employer may not prohibit the union representative from speaking out during an investigatory interview. See *Barnard College*, 340 NLRB No. 106 (2003); *Southwestern Bell Telephone Company*, 251 NLRB 612 (1980), enf. denied 667 F.2d 470 (5th Cir. 1982); *Texaco, Inc.*, 251 NLRB 633 (1980), enf. 659 F.2d 124 (1981). An employer may, however, insist that an employee give his own explanation of events. *Weingarten*, supra at 260 ("The representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who may have knowledge of them. The employer, however, is free to insist that he is only interested, at that time, in hearing the employee's own account of the matter under investigation.")

It is undisputable that the August 12 meeting was a part of the Respondent's investigation into Eubanks' work conduct. Thus, the Respondent posted a memo to employees after Eubanks was suspended that read in pertinent part: "CSO Steven Eubanks has been relieved of duty pending investigation of numerous violations of the Standards of Performance." See *Baton Rouge Water Works Company*, 246 NLRB 995, 997 (1979) (*Weingarten* rights attach where an employer seeks facts of disciplinary action, attempts to have an employee admit his alleged wrongdoing, or to have the employee sign a statement to that effect.) If Lauer had restricted Robbins to the role of a silent observer during an investigatory interview then it is likely there would have been a *Weingarten* violation. That is not, however, what happened. First, the purpose of the meeting was for Lauer to present Eubanks with written questions and to request that he respond to these in writing. Second, at no time did Lauer question or interview Eubanks about the matter under investigation. Third, the evidence shows that the restrictions Lauer placed on Robbins were to the point that the written responses were to be those of Eubanks alone. The Government does not argue that this objective was erroneous, i.e., that the Respondent was

proscribed from obtaining Eubanks' untainted account of events. Fourth, Robbins was not prohibited by Lauer from perusing the questions or raising arguments or issues about those questions. Fifth, Lauer told the union men that they could confer privately in the hallway before Eubanks completed his responses and they took advantage of that opportunity. Indeed, Robbins admitted that Lauer did not deny him any request he made. Sixth, Lauer did not prevent Robbins from providing additional information or arguments regarding the events surrounding Eubanks' disciplinary situation. Seventh, Lauer was not even present in the same room while Eubanks wrote his responses to the questions. In sum, I find based on the record as a whole that Eubanks was not denied the assistance of union representation in contravention of the standards contemplated by *Weingarten*. I conclude, therefore, that the Government has failed to prove by a preponderance of the evidence that the Respondent violated Section 8(a)(1) of the Act by its conduct at the August 12 meeting.

ORDER

The Complaint is dismissed in its entirety.

Dated: Washington, D.C. December 21, 2005

Albert A. Metz
Administrative Law Judge